STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

February 6, 2006

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: Bellsouth Corporation Petition for Rulemaking to Change the Distribution Methodology for Shared Local Number Portability and Thousands-Block Number Pooling Costs
RM-11299

Dear Ms. Dortch:

The California Public Utilities Commission (CPUC) respectfully requests that the enclosed document entitled **"REPLY COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND THE PEOPLE OF THE STATE OF CALIFORNIA ON BELLSOUTH CORPORATION'S PETITION FOR RULEMAKING"** be accepted for electronic filing in the above docket.

Thank you for your cooperation and assistance.

Sincerely,

/s/ LAURA E. GASSER

Laura E. Gasser
Legal Division

LEG:cdl

Enclosure

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of: Bellsouth Corporation Petition for Rulemaking to Change the Distribution Methodology for Shared Local Number Portability and Thousands Block Number Pooling Costs	 RM-11299

REPLY COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND THE PEOPLE OF THE STATE OF CALIFORNIA ON BELLSOUTH CORPORATION'S PETITION FOR RULEMAKING

RANDOLPH L. WU
LIONEL B. WILSON
LAURA E. GASSER

505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-2169
Fax: (415) 703-2262

Attorneys for the
California Public Utilities Commission
and the People of the State of California

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**REPLY COMMENTS
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ON BELLSOUTH CORPORATION'S PETITION FOR RULEMAKING**

The California Public Utilities Commission and the People of the State of California (CPUC or California) hereby file these reply comments in response to Bellsouth Corporation's (Bellsouth) Petition for Rulemaking (Bellsouth Petition), filed on November 3, 2005. In its Petition, Bellsouth asks the Federal Communications Commission (the Commission) to initiate a rulemaking to change the cost distribution methodology for local number portability (LNP) and thousands-block number pooling from revenue-based to usage-based. Bellsouth contends the current method of allocating shared industry costs for LNP and number pooling among service providers based upon total end-user telecommunications revenues is no longer competitively neutral as the Telecommunications Act of 1996 requires. Bellsouth Petition at 15-25. Bellsouth asserts it is paying disproportionately too much of the shared costs and these expenses are "adversely affecting Bellsouth's ability to compete effectively in the marketplace." *Id.* at 28.

The CPUC does not comment here on all issues raised in Bellsouth's Petition. Silence on any issue does not connote either agreement or disagreement with the matter proposed.

I. SUMMARY

While the CPUC neither supports nor opposes Bellsouth's Petition, the CPUC is concerned that a methodology change could result in carriers' passing through the shared LNP and number pooling costs to customers. In order to continue to foster full competition, the CPUC recommends that the Commission prohibit service providers from imposing end-user fees to recover those shared costs. The CPUC also cautions that a usage-based methodology could negatively affect thousand-block number pooling by providing less incentive for service providers to participate. Finally, the CPUC recommends that the Commission verify the cost and other financial claims Bellsouth sets forth in its petition.

II. DISCUSSION

A. Service Providers Should Not Be Allowed To Impose End-User Fees To Recover Shared LNP And Number Pooling Costs

The CPUC is neutral about the methodology the Commission uses to allocate shared LNP and number pooling costs. However, following a methodology change, carriers may attempt to pass through the shared costs by imposing fees on end-users. For example, under the usage-based system Bellsouth proposes in which each service provider pays based upon its actual use of the particular database serving its region, carriers may attempt to recoup shared LNP costs by charging their customers a fee to port customers' telephone numbers. Such a fee very well could discourage customers from switching among carriers and thus work directly against the Commission's goal of promoting competition by hindering consumers' ability to pursue better features, coverage, and prices. To continue to foster full competition, then, the CPUC strongly recommends that, as part of any alteration to the current cost allocation methodology, the Commission prohibit service providers from imposing such end-user fees to recover shared LNP and number pooling costs.

B. A Usage-Based Methodology Could Negatively Affect Number Pooling By Providing Less Incentive To Participate

If the Commission decides to alter the current cost allocation methodology, the Commission should be mindful of the effects on carriers' participation in thousands-block number pooling. In its 2000 Report and Order, the Commission determined that "number optimization measures, such as thousands-block number pooling, provide the greatest benefit when participation is maximized." *Number Resource Optimization*, 15 FCCR 7574 (2000), at ¶ 121. The Commission also found that number pooling extends the life of the North American Numbering Plan (NANP) and reduces the incidence of stranded numbers. *Id.* at ¶ 122. A usage-based methodology for allocating shared industry costs could negatively affect participation in number pooling and defeat these benefits, specifically by shifting costs to service providers other than the incumbent local exchange carriers (ILECs).

Donating and returning contaminated thousand-blocks may involve porting numbering resources back to the same service provider that donated or returned them, with an associated cost. In addition, when service providers acquire thousand-blocks of which they are not the code holder, they must port those thousand-blocks to themselves, similarly with an associated cost. Under a usage-based system, both of these porting situations would increase the costs that carriers would have to pay and thus decrease the incentives to participate in number pooling. A service provider would then either choose to acquire only thousand-blocks of which it is a code holder, resulting in a faster decrease of whole NXX codes associated with an area code and premature number exhaust, or acquire its numbering resources through the North American Numbering Plan Administrator as whole NXX codes.

As the Commission recognized in adopting the revenue-based methodology, and as supported by data from the national pooling administrator's public website (at http://www.nationalpooling.com), service providers other than ILECs generate most of the pooling activities. A usage-based system could constrain competition by shifting shared costs from ILECs to non-ILECs, which would have to pay more to acquire the thousand-blocks needed to establish themselves in the market and compete with those service providers with large number inventories. Non-ILECs might choose to acquire numbers in rate centers not covered by a mandatory pooling status, even if those rate centers are not the most profitable.

For these reasons, the CPUC is concerned that a change in the current methodology may hinder participation in number pooling. Given the increased costs and the ability to acquire numbers as whole NXX codes without a mandatory pooling status, non-ILECs would have less incentive to participate. If the Commission decides to change the current methodology, the CPUC urges the Commission to ensure that service providers have the same or more incentives to participate in number pooling to cultivate robust competition and vigorous number conservation.

C. The Commission Should Verify Bellsouth's Cost And Other Financial Claims

As other entities commenting on the petition point out, Bellsouth makes a number of cost and other financial claims but fails to provide documentary evidence to support them. If the Commission decides to change the shared cost allocation mechanism, the CPUC recommends that the Commission confirm the accuracy of Bellsouth's cost and other claims before doing so.

For example, Bellsouth asserts that "[e]scalating shared LNP and pooling costs are adversely affecting Bellsouth's ability to compete effectively in the marketplace by significantly increasing its expenses" while its revenues "remained flat over the last several years." Bellsouth Petition at 28-29. Yet, as T-Mobile USA, Inc. notes, Bellsouth does not back up its claims that it is experiencing difficulties in competing and that the current methodology is hindering its ability to earn a normal return. Comments of T-Mobile USA, Inc., filed January 5, 2006, at 14. *See also* Opposition of Time Warner Telecom, filed January 5, 2006, at 7 ("Bellsouth offers no basis for [the] assertion" that the revenue-based system has adversely affected its ability to earn a normal rate of return).

XO Communications and Xspedius Communications also point out that Bellsouth's cost data is "selective" and only describes the dollar amounts of Bellsouth's payments "without providing any context in terms of financial or competitive impact." Comments of XO Communications Services, Inc. and Xspedius Communications, LLC, filed January 5, 2006, at 10. Finally, Bellsouth presents several charts -- regarding the number of database uploads in the southeast region, how many of those uploads involved wireless carriers, the southeast region's total shared LNP and number pooling costs, and Bellsouth's percentage use of the southeast region database – but does not indicate the source of the data. *Id.* at 20-24. The CPUC recommends that the Commission look more closely into these claims before pursuing a methodology change.

III. CONCLUSION

Whatever allocation methodology the Commission applies to shared LNP and number pooling costs, the CPUC encourages the Commission to continue to promote competition by preventing carriers from assessing end-user fees on customers to recover those costs. In addition, the CPUC raises the concern that a usage-based methodology

could decrease participation in number pooling. The CPUC also urges the Commission to verify Bellsouth's cost and other financial claims before taking any action.

Respectfully submitted,

RANDOLPH L. WU
LIONEL B. WILSON
LAURA E. GASSER

By: /s/ LAURA E. GASSER

Laura E. Gasser

Attorneys for the
California Public Utilities Commission
and the
People of the State of California

505 Van Ness Ave.
San Francisco, CA 94102
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